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## INTERSTATE DIALOGUE IN STATE CONSTITUTIONAL LAW

Patrick Baude\*

There are many important similarities between Herbert Wechsler's *Neutral Principles*<sup>1</sup> and James Gardner's *Failed Discourse*.<sup>2</sup> Both have an "emperor's new clothing" quality that has done much to stimulate an interest in ready-to-wear on the part of legal scholars. Writing in 1959, Wechsler called into question the prevailing mood that the country was on the road to salvation thanks to the Supreme Court and Earl Warren. Wechsler asked whether the great decision in *Brown v. Board of Education*<sup>3</sup> could be justified by neutral principles of constitutional law or whether it was simply a results-justified constitutional event. Richard Posner is no doubt right in concluding that Wechsler's article itself has little to say to us now,<sup>4</sup> but it is remarkable how much contemporary constitutional theory grows out of the project of trying to allay Wechsler's concerns. The responses of Bickel and Gunther alone could form the basis of a seminar in constitutional theory.<sup>5</sup>

So too, perhaps, with Gardner's article. Writing five years ago to question the new energy with which scholars and activists (and outvoted Supreme Court Justices) were calling upon state courts to find expanded rights in the state constitutions, Gardner questioned whether the enterprise was truly a "constitutional" venture or simply a superficially legitimate package for liberal political ideas whose welcome in Washington was slipping. Gardner's article in turn has led many state constitutional law scholars to defend their visions of an important independent role for theories of state constitutional law. An excellent primer for these responses is the symposium in this journal four years ago.<sup>6</sup>

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1. Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959).

2. James A. Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761 (1992).

3. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

4. See RICHARD A. POSNER, *OVERCOMING LAW* 70-75 (1995).

5. ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* (1962); Gerald Gunther, *The Subtle Vices of the "Passive Virtues"—A Comment on Principle and Expediency in Judicial Review*, 64 COLUM. L. REV. 1 (1964).

6. *Roundtable*, 24 RUTGERS L.J. 927 (1993).

In this article, I focus on one point in Gardner's critique. A constitution, he argues, following Burt<sup>7</sup> and Cover,<sup>8</sup> is an "epic" which depends on shared norms and narratives. This epic can provide the inspiration and context necessary to sustain courts and other interpreters in interposing themselves against the crowd temporarily in power down at the statehouse. A fruitful epic should provide guidance in resolving ambiguities and other uncertainties. A powerful epic should confer on judges the authoritative legitimacy needed to maintain their functions. Alternatively, one can, as Hans Linde<sup>9</sup> very effectively has done, deny the necessity of the epic to the constitutional. Even for the federal constitution, whose epic nature is easy to see, one of the historical justifications of judicial review is the idea of the "little old judge" whose duty is simply to apply the legal provision highest on the table of authorities. This article, however, proceeds with reverence toward Robert Cover, and accepts the principle that an important constitutional idea needs to be linked to a vision of identity. In that case, the problem, as Gardner compellingly observes, appears to be that the current situation of the individual states does not support any distinctive state-bound vision of identity: "Americans are so alike from state to state, move so freely around the country, and inhabit such a culturally homogenizing environment, that any true character differences that may have existed between the states in the past have surely disappeared."<sup>10</sup> If the state in which we live is a temporary condition and our perception of life is largely shaped by national media, if our friends, families and employers are distributed throughout the country in a changing pattern, what significant meaning in our lives could we attach to the state constitution we happen to be living with this year? Would our conception of love and family change because we moved from Hawaii to California, or, as Gardner puts it: "Can the elements of basic human dignity, for example, really mean something very different to the inhabitants of Ohio and Indiana?"<sup>11</sup>

My argument here is that there are meaningful local epics, profound in their contribution to identity and meaningful in the world of constitutional interpretation. These epics are not specific to a state but apply to a group of

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7. Robert A. Burt, *Constitutional Law and the Teaching of the Parables*, 93 YALE L.J. 455 (1984).

8. Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

9. Hans A. Linde, *Are State Constitutions Common Law?*, 34 ARIZ. L. REV. 215 (1992).

10. James A. Gardner, *What Is a State Constitution?*, 24 RUTGERS L.J. 1025, 1028 (1993).

11. Gardner, *supra* note 2, at 825.

states, sometimes a region; they are distinctly less than national in scope. An epic is, after all, a kind of narrative, a species of literature. In American literature generally, we are all familiar with the greatness of regional traditions. Faulkner, Dreiser and Hawthorne paint different pictures of the human condition, pictures which both derive their meaning from, and help to create, regional contexts of meaning quite different from each other. It would not be incongruous to find similar meaningful variations in the constitutions of Mississippi, Indiana and Massachusetts. Gardner is right that citizens of Ohio and Indiana are likely to share many values, attitudes and points of view. Those states share a long, unguarded border, a common demographic and economic composition, a climate, a huge river valley, the Cincinnati Reds, a regional accent, and, ultimately, a history of organic legal protection for human rights originating in the other great charter of liberty written in Philadelphia in 1787, the Northwest Ordinance. But change the example to, say, *New Mexico* and Ohio, and it doesn't seem at all silly to ask whether there are differences in the images of human dignity as significant as there would be between residents of Maine and New Brunswick. Of course, New Mexico is probably not a fair example, since many Americans think a visa is required to visit New Mexico. In fact, the United States Senate actually passed a resolution designating "New-Mexico-Is-a-State Day" in 1986.<sup>12</sup>

Indeed, even when we talk about the great mobility of the population of the United States, it is important to note that most mobility is not across a state line. In recent years, the annual movement of persons from one state to another has been about 2.6 percent of the population.<sup>13</sup> Even of those, a large proportion have not moved from one region to another; in the language of geographers, many are micro-migrating rather than macro-migrating.<sup>14</sup> Our perception of a restless nation seems to be based in part on two special events of the 1950s and the 1960s, the emigration of African Americans from the South and the settlement of the Sunbelt. In many instances, these atypical migratory patterns were in fact closely linked to different visions of

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12. *Talking Points Stating the Truth On New Mexico*, WASHINGTON POST, June 16, 1986 at A9.

13. U.S. CENSUS BUREAU, GEOGRAPHIC MOBILITY: MARCH 1993 TO MARCH 1994 (1994).

14. MARTIN CADWALLADER, MIGRATION AND RESIDENTIAL MOBILITY 31 (1992). During the most recent year for which numbers are available, 6.7 million Americans moved from one state to another, but only 3.1 million of those interstate movers left their region. U.S. CENSUS BUREAU, *supra* note 13, at xiv.

human dignity. African Americans specifically sought the political traditions of states created under the anti-slavery rules of the Northwest Ordinance. It would be quite wrong to dismiss these enormously important examples of regional migration as demonstrating the irrelevance of the constitutional cultures of the individual states. In at least the instance of migration to the industrial Midwest, the difference in regional constitutional values was an underlying cause of the movement.

The core of this article is a heuristic exercise, reported in the table below. I collected a comprehensive list of the occasions on which a state's highest court referred to the constitution of another state. If state constitutions were randomly varied across the country, one would not expect to see significant differences in regional patterns. And there certainly are signs in these data that regionalism or geographical proximity is not the consuming explanation of the occasions on which one state consults the constitutional learning of another state. For example, twenty-nine states refer to the constitution of California more often than to any other state and these states that refer most to California are as removed as Massachusetts and Louisiana. If state constitutions were rated by *U.S. News and World Report*, California would be the reputation leader, followed very distantly by Virginia and Wisconsin, with three firsts apiece.

Of course, states are likely to cite decisions of the states on which their own constitutions may have been modeled. The Oregon constitution, for example, bears a close resemblance to the Indiana constitution, and accordingly, Oregon's most frequent reference to an out-of-state constitution is Indiana. But even this pattern is far from universal. In California, for example, "of the 137 sections of the original Constitution 66 were adopted from the Constitution of Iowa and 19 from the Constitution of New York."<sup>15</sup> Even so, the California Supreme Court cites Illinois ahead of New York and nine states ahead of Iowa. Similarly, Kentucky, whose constitution is especially indebted to Pennsylvania's,<sup>16</sup> is more likely to refer to its neighbors Missouri and Tennessee. Turnabout being fair play, Louisiana's constitution was modeled on Kentucky's,<sup>17</sup> but the Louisiana Supreme Court is more likely to consult California and Alabama.

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15. *Diamond v. Bland*, 521 P.2d 460, 465 (Cal. 1974) (Mosk, J., dissenting).

16. *Commonwealth v. Wasson*, 842 S.W.2d 487, 492 (Ky. 1992). In fact, the historical influence of Pennsylvania's constitution is remarkable. Robert F. Williams, *The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism*, 62 TEMP. L. REV. 541 (1989).

17. *State v. All Pro Paint & Body Shop*, 639 So. 2d 707, 712 n.7 (La. 1994).

## PATTERNS

Still, the data reported in the table do show several strong regional patterns. Consider a few examples from the West. Fifty-nine percent of Montana's references are to Alaska, California, Oregon, Washington, Arizona and Colorado. The Utah Supreme Court is most likely to refer to California, Arizona, Colorado, Oregon and Montana. Alaska is most likely to refer to California, Washington and Hawaii; while Hawaii, in turn, is most likely to refer to California, Alaska and Oregon. The Washington Supreme Court is most likely to refer to California, Oregon and Colorado, as is the Idaho Supreme Court.

A second pattern emerges in the southern part of the country, but it is difficult to decide if the pattern follows the historical lines of the confederacy or the more contemporary picture of the Sunbelt. Mississippi, for example, is most likely to refer to Alabama, Florida, and Louisiana. Alabama is likely to refer to Florida and Kentucky. Louisiana and Georgia, on the other hand, are most likely to refer to California.

A third pattern emerges among the original colonies. Perhaps the most striking phenomenon for many of these states is how seldom they refer at all to the constitutions of other states. The Supreme Court of Delaware, for example, has only referred to other states' constitutions thirty times, Georgia has done so twenty-nine times, New Hampshire thirty-five, and South Carolina twenty-one. Compare these numbers with the fact that Colorado, not a huge state, has referred thirty-four times to the constitution of California alone. A high proportion of the early states' references are to each other; New Jersey is most likely to refer to New York, for example. Many of these states, however, refer most of all to California: e.g., Connecticut, Georgia, Maryland, Massachusetts, North Carolina and Pennsylvania.

A fourth pattern or set of similarities emerges in the larger Midwestern states. There is a strong tendency to refer first of all to California and New York; this is the pattern in Illinois, Iowa, and Ohio. Wisconsin and Michigan refer to California first, but in the case of Wisconsin, New Jersey second, in the case of Michigan, Ohio second. Both Indiana and Minnesota refer first to Wisconsin.

This brief impressionistic summary is not intended to suggest anything like a definitive taxonomy of regional identities. One of the reasons we do not often think of regional divisions in American law is the difficulty of defining the precise boundaries of a region. Even the divisions of the *National Reporter System* into the various regions seem to be more a product of the fact that John West started business in Minneapolis than of

any premeditated design.<sup>18</sup> The problem is as difficult as that of dividing a population of individuals into a finite number of mutually exclusive families. Wittgenstein uses family membership as a classic example of the difficulty of logical definition.<sup>19</sup> I have my brother's nose, he has my sister's smile, she has my brown eyes; we are related, and yet there is no one characteristic we all share.

It would be possible to massage the data in the table, no doubt, so as to define certain characteristics that would create constitutional families. The classifier could make different schemes fit by classifying Missouri as a southern state, or a midwestern one, on breaking the West into the Southwest and the Northwest, and so on. There is, indeed, a branch of modern evolutionary theory, complete with powerful mathematical tools, whose mission it is to create possible family trees out of similar sorts of data. I think this would be inappropriate with this sort of data, which only reflect one of several possible points of relationship. I have left the table as it is, believing it clearly shows a non-random pattern with significant regional variations. This fact alone is hardly surprising, but it is important. For if there are significant regional patterns, however exactly they might be defined, this underlying force field could be expected to shape the values of the different state constitutions. I hope the reader finds that the table suggests, heuristically, several possible lines for exploring regional or other similarities.

The important part of this argument would then be to show that these patterns of difference between regions deal with important matters. Part of Gardner's charge against state constitutionalism as a serious legitimate task is his argument that state constitutions deal with trivial matters. If the difference from one region to another is that the East is baseball country and the Midwest the land of high school basketball, or that male lawyers wear cowboy boots in much of the West, but Italian loafers on either coast, these regional variations would have little significance for my argument. I think, however, that it is possible to identify a historical and cultural narrative that gives a definite place to each of the four patterns suggested above.

*The West.* The courts in the West seem self-conscious of a western identity. In rejecting citations from Illinois and Iowa, the Supreme Court of Idaho observed that these were not "western states" and went on to say, "The two mid-western states are seen as having identical provisions, and

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18. Thomas Woxland, "Forever Associated with the Practice of Law": *The Early Years of the West Publishing Company*, 5 LEGAL REFERENCE SERVICES Q., Spring 1985, at 115, 116-18.

19. LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 67 (3d ed. 1974).

hence the Illinois case was sound precedent for the Iowa court. It did not properly serve as precedent for an Idaho court examining an entirely different provision in an Idaho constitution."<sup>20</sup> There are many similar references to the "western states" as a distinct set of constitutions throughout the region.<sup>21</sup> An important study by Gordon Bakken traces the evolution of some of these "western" ideas at the constitutional conventions of eight mountain states. He describes concerns with mineral issues, water, taxation, labor and corporate matters that have a continuing resonance in contemporary politics.<sup>22</sup> The *New Mexico Law Review* will publish a symposium in 1998 dealing with "The Role of the Constitutions of Western States."<sup>23</sup>

In addition to dealing with the special, essentially geographical, problems of the West, these constitutions are characterized by heavy reliance on mechanisms like initiative and referendum. The effect is that their constitutions tend to be very fluid in content, easy to amend and often amended. These are constitutions of direct democracy rather than republican virtue. The eastern constitutions have a central epic of distrust for the government. The Western constitutions reflect this distrust through the new mechanism of direct democracy. Perhaps this is why the revival of republican theory is such an east-coast project.

*The South.* The study of Southern literature has always been a recognized branch of American studies. The history of the South, by the same token, is obviously linked with, but different from that of the rest of the country. The development in the South of the idea of states' rights, especially after the Missouri compromise in 1819, illustrates important themes in constitutionalism generally. These issues are part of any standard treatment of the history of the region.<sup>24</sup> Two important recent studies have traced the impact of these ideas on the specific question of state constitutions. Fehrenbacher<sup>25</sup> has traced the effect of slavery and Southern

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20. *City of Pocatello v. Anderton*, 679 P.2d 647, 656-57 (Idaho 1984) (Bistline, J., concurring and dissenting).

21. *E.g.*, *State ex rel Greely v. Confederated Salish & Kootenai Tribes*, 712 P.2d 754, 758 (Mont. 1985); *Dworkin v. L.F.P., Inc.*, 839 P.2d 903, 930 (Wyo. 1992).

22. GORDON MORRIS BAKKEN, *ROCKY MOUNTAIN CONSTITUTION MAKING, 1850-1912* (1987).

23. *See also* Christian G. Fritz, *The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West*, 25 *RUTGERS L.J.* 945, 948 (1994).

24. Most obviously, C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH 1877-1913* (1971).

25. DON E. FEHRENBACHER, *CONSTITUTIONS AND CONSTITUTIONALISM IN THE SLAVE-*



nationalism on antebellum constitutions, and Mauer,<sup>26</sup> in an article on the Texas constitution, has created a useful account of the subsequent influence of the Reconstruction.

The idea of the distinctiveness of the South is certainly fixed in popular culture. The question whether this historical and popular "epic" has current constitutional relevance in the courts is, however, not an easy one. In the United States Supreme Court, Justice Powell once objected that the de jure/de facto distinction in desegregation cases unduly perpetuated the idea of the distinctive South.<sup>27</sup> Justice Thurgood Marshall objected in an affirmative action case that it should not be necessary to prove a specific history of discrimination in a city which was once a confederate capital.<sup>28</sup> At least from the citation pattern reported in the following table, however, it is less clear that the former confederate states generally turn to each other. Virginia, for example, is more likely to refer to Illinois and North Carolina to California and Michigan. But Alabama and Mississippi have a distinctly Southern pattern.

*The Old Frontier.* The story of the Midwest is the story of the early frontier. Here the courts are conscious of the change along the Allegheny mountains. The Ohio Supreme Court, for example, reflected self-consciously on these issues in dealing with the question of whether to choose the chief justice by seniority; the court noted the prevalence of short, fixed terms in "the newer states of the west and south," as opposed to seniority in "the older Atlantic states."<sup>29</sup> In a move that might have pleased Horace Greeley, the court went West for its rule.<sup>30</sup> There appears to be a similar sentiment in North Dakota's description of its constitution as "unlike the constitutions of many Eastern states."<sup>31</sup>

Three years ago, I wrote that an important Indiana Supreme Court decision seemed for the first time to describe an epic for that state's constitution.<sup>32</sup> Rereading that case for this article, I realized that the history the court described was not at all specific to Indiana.

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HOLDING SOUTH (1989).

26. John Mauer, *State Constitutions in a Time of Crisis: The Case of the Texas Constitution of 1876*, 68 TEX. L. REV. 1615 (1990).

27. *Keyes v. School District No.1*, 413 U.S. 189, 217 (1973) (Powell, J., concurring).

28. *Richmond v. J.A. Crosson Co.*, 488 U.S. 469, 528 (Marshall, J., dissenting).

29. *Id.*

30. *Belford v. Hueston*, 4 N.E. 471, 477 (Ohio 1886).

31. *Schnaible v. City of Bismarck*, 275 N.W.2d 859, 865 (N.D. 1979).

32. Patrick Baude, *Has the Indiana Constitution Found Its Epic?*, 69 IND. L.J. 849 (1994).

Most of the court's narrative involved the frontier generally. The court's most telling passage referred not to "Hoosiers" but to "frontier democrats" and to the "constitutions of the Ohio Valley."<sup>33</sup> A particularly evocative reference to this historic frontier occurs in the Oregon Supreme Court. The issue was whether the right to bear arms included a switchblade knife. Tracing the origin of its constitutional language back to Indiana, the court created a convincing image of the role of the knife in the history of the Ohio valley, separating this "knife country" from the more genteel "sword world" across the Alleghenies.<sup>34</sup>

There are many references in this region to the Northwest Ordinance. Many of these are simply historical, in an effort to trace particular principles of title or water law.<sup>35</sup> Some of these references, however, seem to reach the level of deep constitutional narrative. Many who see the narrative of the original federal constitution as the story of compromise with the evil of slavery find in the Northwest Ordinance a more compelling narrative of constitutional freedom. The Supreme Court of Michigan, for example, once referred to the principles expressed in the Northwest Ordinance as a bulwark against the "machinations and nefarious schemes" of Communists.<sup>36</sup> The Supreme Court of Ohio has, with less flamboyant language, recognized its constitution's debt to the principles of the Northwest Ordinance. "[W]hen Ohio did adopt a constitution, it wrote into that constitution practically every provision of the Ordinance . . . ."<sup>37</sup> The courts of Illinois in 1910 used the history of the Northwest Ordinance to exclude prayer from public schools long before the United States Supreme Court reached that conclusion. The court distinguished the "Puritan in New England" and the "Cavalier in Virginia" with their established churches from the spirit of the Northwest Ordinance.<sup>38</sup> Recent cases continue to refer to the principles of the Ordinance. In a major recent decision involving the state constitution and school finance, the Ohio Supreme Court referred to the Ordinance's "[v]isions of the West as a nursery of republican virtues."<sup>39</sup>

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33. *Price v. State*, 622 N.E.2d 954, 962-63, n.10 (Ind. 1993).

34. *State v. Delgado*, 692 P.2d 610, 613 (Or. 1984).

35. *E.g.*, *Scott v. Dravo Corp.*, 295 N.E. 2d 284 (Ill. 1973).

36. *People v. Ruthenberg*, 201 N.W. 358, 369 (Mich. 1924). Note also a recent reference to the constitutions of "sister states of the Northwest Territory." *People v. Bullock*, 485 N.W.2d 866, 890 n.2 (Mich. 1992) (Boyle, J., concurring in part and dissenting in part).

37. *State ex rel Dohaney v. Edmondson*, 105 N.E. 269, 272 (Ohio 1913).

38. *People ex rel Ring v. Board of Educ.*, 92 N.E. 251, 253 (Ill. 1910).

39. *DeRolph v. State*, 677 N.E.2d 733, 769 (Ohio 1997) (Douglass J., concurring) quoting HAROLD HYMAN, *AMERICAN SINGULARITY* 23-4 (1986). For a general discussion of the symbolic meanings of the Ordinance, see Dennis P. Duffey, *Note: The Northwest*

*The Early States.* The early states are not conscious of their own history as a regional narrative because it is exactly the same as the story of the national constitution.<sup>40</sup> This is why they tend to cite other states less frequently than do the courts of newer states. When the Maine Supreme Court was asked to give independent meaning to the state guarantee of free press, the court observed that both the Maine and the United States constitutional language were derived from the Massachusetts Declaration of Rights. In the absence of "any distinguishing history," which is to say, because the free press epic of Massachusetts and Maine *is* the free press epic of the nation, there was "no reason to construe our State Constitution more broadly."<sup>41</sup> A striking illustration of this point is a recent case in which the Massachusetts court seeks to divine the meaning of a part of its constitution by reading the papers of its author—i.e., by reading John Adams' "Thoughts on Government"<sup>42</sup>—a practice even Justice Scalia would doubtless approve as a way of discovering the original meaning of the federal constitution. In other examples, the New York Court of Appeals made a point of referring to the states in existence in 1787,<sup>43</sup> and the Pennsylvania Supreme Court has paid special attention to "the original thirteen colonies."<sup>44</sup>

#### EPICS AND LEGITIMACY

Another important function of the epic is to confer legitimacy. In federal constitutional law, a common use of historical narrative is to explain the power of the Supreme Court to override what appear to be conflicting democratic judgments by the legislature. This issue of legitimacy is especially important when a decision concerns the structure of government itself and it is in cases of this type that the Supreme Court seems especially likely to rely on an argument from original intent rather than "fashionable European literary theory"<sup>45</sup> to justify its own authority. Using this historical narrative, this epic is effective because the story of the founding is a deeply shared and obviously important token of legitimacy. It is doubtful that many

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*Ordinance as a Constitutional Document*, 95 COLUM. L. REV. 929 (1995).

40. Gordon S. Wood, *Foreword: State Constitution-Making in the American Revolution*, 24 RUTGERS L.J. 911 (1993).

41. *In re Letellier*, 578 A.2d 722, 727 (Me. 1990), quoting in part the Supreme Judicial Court of Massachusetts, *Commonwealth v. Corsetti*, 438 N.E.2d 805 (Mass. 1982).

42. *Opinion of the Justices*, 595 N.E.2d 292 (Mass. 1992).

43. *In re Weis*, 270 N.E.2d 294 (N.Y. 1971).

44. *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991).

45. Both the ironic phrase and the idea are borrowed from Stephen L. Carter, *The Right Questions in the Creation of Constitutional Meaning*, 66 B.U.L. REV. 71, 72 (1986).

state courts could invoke the story of their constitutions with the same success. Few would recognize the authors of their state constitution and perhaps fewer would esteem them as particularly wise, provident or transcending ordinary politics. It appears that one solution for this problem of legitimacy for a state court is to refer to a larger group of other states. In explaining why the governor must do something she does not want to do, it may be especially helpful to be able to observe that other courts in other states have made the same demands and have been successful.

Two kinds of legitimacy issues can arise in a state constitutional case. First are questions of separation of powers. Decisions involving the judicial supervisory power itself seem particularly prone to examine and comment upon the constitutions of many states.<sup>46</sup> Questions of executive<sup>47</sup> and legislative<sup>48</sup> power are also likely to trigger a multistate exploration.

Second are questions of the very premises of constitutional authority itself. In upholding the authority of the legislature to override a constitutional convention, the Idaho Supreme Court relied directly on experiences in other states. "History is replete with examples of constitutions being proposed by methods not specifically authorized by then existing organic law which were later submitted to and approved by the people and are in existence as constitutions."<sup>49</sup> In another convention case, the Michigan Supreme Court looked to the constitutions of thirty-one states.<sup>50</sup> Perhaps related to these explicit questions of legitimacy are a few others of a profoundly controversial nature. Thus, in an early twentieth century case, the Illinois Supreme Court conducted a fairly wide canvass of

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46. The Maryland Supreme Court, for example, looked at 18 states in ruling on the court's own supervisory power. *In re* Petition for Writ of Prohibition, 539 A.2d 664 (Md. 1988). The Mississippi Supreme Court looked to 20, *City of Mound Bayou v. Johnson*, 562 So. 2d 1212 (Miss. 1990), and Missouri to 19. *Clark v. Austin*, 101 S.W.2d 977 (Mo. 1937).

47. The Massachusetts Court, for example, cites very few other states. The majority of citations (nine) are in its analysis of the item veto. *Opinion of the Justices*, 425 N.E. 2d 750 (Mass. 1981). The Missouri Supreme Court looked to 23 states in construing the powers of the lieutenant governor, *Danforth v. Cason*, 507 S.W.2d 405 (Mo. 1973), New Mexico to 15 for the powers of the Attorney General, *Attorney General v. Reese*, 430 P.2d 399 (N.M. 1967).

48. *E.g.*, the references to 37 states in a reapportionment case, *Scholle v. Hare*, 104 N.W. 2d 63 (Mich. 1960), or to 34 in another election case, *Chase v. Lujan*, 149 P.2d 1003 (N.M. 1944), 30 in a voter registration case from the last century in the Ohio Supreme Court, *Daggett v. Hudson*, 3 N.E. 538 (Ohio 1885), or 34 in a candidate's eligibility case from West Virginia, *Haught v. Donnahoe*, 321 S.E.2d 677 (W. Va. 1984).

49. *Smith v. Cenarrusa*, 475 P.2d 11 (Idaho 1970).

50. *Stoliker v. Waite*, 101 N.W.2d 299 (Mich. 1960).

other states' provisions before ruling itself.<sup>51</sup> There is a similar pattern in cases involving the right to bear arms; it is common for states to review nearly every other state's constitution when asked to decide on the independent meaning of the state provision.<sup>52</sup>

My limited claim to what these observations and the following data establish is this: There is an excluded middle in the usual discussions about the legitimacy of a strongly independent state constitutional interpretation. Thinking in positivist terms, it is easy to assume that legitimate power must come from either the federal authorities or the constitution of the individual state. What I have tried to document is the idea that there is a community of states, which is something different from the federal government. Within this community, there is a dialogue about the meanings of state constitutions. It is this dialogue and this community, or communities, which give meaning to being a state.

#### A NOTE ON METHODOLOGY

The following table lists every case in which the highest court of the state referred to the constitution of another state. It was compiled by the use of the Lexis research system. The author ran a search in each state library using a boolean expression of, essentially, "constitution" and its abbreviations, within one, of the names (and abbreviations) of the states other than the one in whose library the search was run. Minor variations were necessary to deal with special problems, as in the case of West Virginia, for example.

The author then used the "kwik" function to look at each of the several thousand cases retrieved through the search. Many of these cases had nothing to do with the subject, e.g., the search would identify expressions like "... the Constitution. *Pennsylvania v. Nelson* . . . " In many instances, the author could identify another relevant citation which was not highlighted by the search. The court might, for example, write something like: "In Oregon, despite the development of considerable conflicting authority, the principle of freedom of expression . . . ." Whenever a reference to another constitution appeared or was strongly suggested within the text selected by

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51. *People ex rel v. Board of Educ.*, 92 N.E. 251 (Ill. 1910). The Vermont Supreme Court, which follows its neighbors in making few references to other states, looked to 12 constitutions in a free exercise ruling. *In re Williams*, 577 A.2d 686 (Vt. 1990).

52. *E.g.*, *State v. Mendoza*, 920 P.2d 357 (Haw. 1996) (referring to 46 other state constitutions); *City of Princeton v. Buckner*, 377 S.E.2d 139 (W. Va. 1988) (referring to 14 states).

the “kwik” function, the author counted it, whether highlighted or not and even if following the suggestion required expanding the window of the “kwik” function. This seemed to be the best way to assure consistency. Only one reference was counted when a case cited the constitution of another state, even if there were multiple references to that constitution within the case.

This search protocol will certainly have missed some references. Many circumlocutions like the one described in the previous paragraph will have occurred outside the search window and were therefore missed. Some references may have been missed because of nonstandard abbreviations or misspellings: a search for the misspelled word “constituion,” for example, produces ninety-nine documents. The misspellings, “Tennessee” or “Ilinois,” yield 43 and 58 cases respectively. The author has read none of these, but some might be relevant to this study. There is, however, no reason to believe that the cases missed through these problems would have any systematic bias and the relations expressed in the table below should not be impaired. Printouts documenting the search process are on file with the author and with the editors of the *Rutgers Law Journal*.

#### TABLE

##### ALABAMA

- 7 references: Florida, Kentucky
- 6 references: Oregon
- 5 references: Illinois
- 4 references: California, Pennsylvania
- 3 references: Georgia, Indiana, North Carolina
- 2 references: Arizona, Connecticut, Kansas, Minnesota, Mississippi, Rhode Island, South Carolina, Wyoming
- 1 reference: Delaware, Hawaii, Idaho, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, South Dakota

##### ALASKA

- 13 references: California
- 9 references: Washington
- 6 references: Hawaii
- 5 references: Colorado, Illinois, New York
- 4 references: Arizona, Maryland, Oregon

3 references: Indiana, Minnesota, Montana, Nebraska, New Jersey, New Mexico, Oklahoma, South Dakota, Texas, Utah, Wisconsin

2 references: Arkansas, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Massachusetts, Michigan, Nevada, New Hampshire, North Dakota, Ohio, Pennsylvania, Wyoming

1 reference: Alabama, Connecticut, Iowa, Kentucky, Mississippi, Missouri, Rhode Island, South Carolina, Tennessee, Vermont, West Virginia

#### ARIZONA

28 references: California

20 references: Oklahoma

16 references: Washington

11 references: Oregon

10 references: Colorado

9 references: Pennsylvania

7 references: Idaho

6 references: Texas

5 references: Ohio, Utah

4 references: Georgia, Illinois, Missouri, Montana, New Mexico, South Dakota, Wyoming

3 references: Alabama, Alaska, Arkansas, Florida, Kentucky, Nevada, New Jersey, New York, Virginia

2 references: Indiana, Maryland, Minnesota, North Carolina, West Virginia, Wisconsin

1 reference: Kansas, Massachusetts, Michigan, Mississippi, New Hampshire, North Dakota, Tennessee

#### ARKANSAS

9 references: California

8 references: Texas

7 references: Missouri

5 references: Oklahoma

4 references: Illinois, Louisiana, Virginia

3 references: Alabama, Indiana, Kentucky, Maryland, New Mexico, North Carolina, Ohio

2 references: Kansas, Minnesota, Montana, Nebraska, Pennsylvania, Wyoming

1 reference: Arizona, Colorado, Connecticut, Delaware, Georgia, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Dakota, Oregon, Tennessee, Washington, West Virginia, Wisconsin

## CALIFORNIA

19 references: Illinois

16 references: New York

15 references: Missouri

12 references: Colorado

10 references: Ohio

9 references: New Jersey

8 references: Arizona, Texas

6 references: Pennsylvania

5 references: Georgia, Indiana, Iowa, Kansas, Massachusetts, Michigan,  
Oregon

4 references: Alabama, Florida, Kentucky, North Carolina, Oklahoma,  
Tennessee, West Virginia, Wisconsin

3 references: Arkansas, Idaho, Minnesota, Nebraska, Nevada, Virginia,  
Washington

2 references: Hawaii, Louisiana, Maryland, Mississippi, South Carolina,  
South Dakota

1 reference: Maine, Montana, New Mexico, Wyoming

## COLORADO

34 references: California

31 references: Missouri

29 references: Illinois

15 references: Oregon

11 references: Kansas

10 references: Pennsylvania, Texas

9 references: Michigan, Washington

8 references: Ohio

7 references: Massachusetts, New Jersey, New York, Oklahoma

6 references: Florida, Nebraska, West Virginia, Wyoming

5 references: Connecticut, Indiana, Kentucky, Minnesota, Tennessee

4 references: Alabama, Alaska, Georgia, Iowa, South Carolina, South  
Dakota, Wisconsin

3 references: Arizona, Maryland, Montana, New Hampshire, North  
Carolina

2 references: Arkansas, Delaware, Hawaii, Idaho, Mississippi, Nevada,  
New Mexico, North Dakota, Virginia

1 reference: Louisiana, Maine, Vermont



## CONNECTICUT

- 10 references: California
- 8 references: New York
- 6 references: New Jersey
- 5 references: Pennsylvania
- 4 references: Illinois, Mississippi, Washington
- 3 references: Florida, Texas
- 2 references: Alaska, Delaware, Hawaii, Kansas, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, Wyoming
- 1 reference: Alabama, Arkansas, Colorado, Kentucky, Louisiana, Michigan, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin

## DELAWARE

- 4 references: Pennsylvania, Maryland
- 3 references: Arkansas, Florida, New York
- 2 references: Connecticut, New Jersey, Virginia
- 1 reference: Alabama, Georgia, Idaho, Iowa, Mississippi, Oklahoma, South Dakota, Wisconsin

## FLORIDA

- 13 references: Texas
- 11 references: California, Georgia, Illinois
- 10 references: Kentucky, Missouri
- 6 references: Alabama, Kansas, Louisiana, North Carolina
- 5 references: New York, Ohio, Pennsylvania
- 4 references: Arkansas, Colorado, Maryland, Mississippi, Oregon, Tennessee, West Virginia
- 3 references: Indiana, Michigan, Minnesota, New Jersey, North Dakota, Oklahoma, Virginia, Wisconsin
- 2 references: Idaho, Iowa, Massachusetts, Nebraska, New Hampshire, New Mexico, South Carolina, Washington
- 1 reference: Arizona, Maine, Vermont

## GEORGIA

- 4 references: California
- 3 references: Florida, Oregon, Tennessee
- 2 references: Alabama, Massachusetts, Pennsylvania, Virginia
- 1 reference: Delaware, Kentucky, Louisiana, New York, South Carolina, Texas, Utah, Washington

## HAWAII

- 7 references: California
- 5 references: Alaska, Oregon
- 4 references: New York
- 3 references: Alabama, Indiana, Pennsylvania
- 2 references: Arizona, Florida, Kansas, Maryland, Nebraska, New Hampshire, New Jersey, Ohio, Washington
- 1 reference: Arkansas, Delaware, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming

## IDAHO

- 19 references: California
- 12 references: Oregon
- 10 references: Colorado
- 8 references: Washington
- 6 references: Illinois, Montana
- 5 references: Arizona, Florida, Missouri, Texas, Utah
- 4 references: New York
- 3 references: New Mexico, Pennsylvania, Wyoming
- 2 references: Indiana, Kentucky, Louisiana, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, Oklahoma, West Virginia, Wisconsin
- 1 reference: Alabama, Alaska, Delaware, Georgia, Iowa, Kansas, Maine, Michigan, South Carolina, South Dakota, Tennessee

## ILLINOIS

- 19 references: California
- 18 references: New York
- 12 references: Massachusetts
- 9 references: Missouri, Wisconsin
- 7 references: Kansas, Nebraska, Ohio, Pennsylvania
- 5 references: Indiana, Michigan, New Jersey, Oregon
- 4 references: Colorado, Florida, Maryland, Texas, West Virginia
- 3 references: Alabama, Georgia, Iowa, Minnesota, Mississippi, South Dakota
- 2 references: Arizona, Arkansas, Idaho, Maine, Nevada, North Dakota, Tennessee

1 reference: Alaska, Delaware, New Hampshire, North Carolina, Oklahoma, Utah, Washington

#### INDIANA

8 references: Wisconsin

6 references: Kentucky, Ohio, Texas

5 references: Illinois

3 references: Montana, Pennsylvania

2 references: Arkansas, California, Delaware, Florida, Kansas, Louisiana, Massachusetts, Michigan, New York, Oregon, Tennessee, Virginia

1 reference: Hawaii, Iowa, Maryland, Minnesota, Missouri, Nebraska, Nevada, Oklahoma, Washington, Wyoming

#### IOWA

7 references: California

6 references: New York

5 references: Ohio

3 references: Arkansas, Illinois, Kentucky, Michigan, Missouri, New Jersey, Wyoming

2 references: Alaska, Arizona, Florida, Kansas, Massachusetts, Texas, Wisconsin

1 reference: Alabama, Colorado, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington

#### KANSAS

9 references: California

6 references: Kentucky, Ohio

5 references: Colorado, Florida

4 references: Alaska, Indiana

3 references: Arizona, Arkansas, Illinois, Iowa, Michigan, Missouri, Oklahoma, Wisconsin

2 references: Connecticut, Maryland, Massachusetts, Montana, Nebraska, New Jersey, New Mexico, Pennsylvania, South Carolina, Texas

1 reference: Delaware, Idaho, Louisiana, Minnesota, Nevada, New Hampshire, Tennessee, Utah, Virginia, West Virginia, Wyoming

#### KENTUCKY

7 references: Missouri

- 4 references: Tennessee
- 3 references: Pennsylvania
- 2 references: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, New York, North Dakota, Virginia, Wisconsin
- 1 reference: Colorado, Delaware, Maryland, Montana, New Hampshire, New Mexico, Ohio, Oregon, South Dakota, Texas, Wyoming

#### LOUISIANA

- 13 references: California
- 9 references: Alabama
- 8 references: Kentucky
- 7 references: Massachusetts, Pennsylvania
- 6 references: Florida, Mississippi
- 5 references: Colorado, Kansas, Michigan, Minnesota, New Jersey, New York
- 4 references: Arizona, Georgia, Montana, Ohio, Texas, Utah
- 3 references: Missouri, Nebraska, North Carolina, Oklahoma, Oregon
- 2 references: Alaska, Arkansas, Iowa, South Carolina, Tennessee, Wisconsin
- 1 reference: Hawaii, Idaho, Indiana, Maine, Nevada, New Mexico, Rhode Island, South Dakota, Vermont

#### MAINE

- 12 references: Massachusetts
- 4 references: California
- 3 references: Nebraska
- 2 references: Alaska, Iowa, Missouri, New Jersey, New York, Rhode Island, West Virginia, Wisconsin
- 1 reference: Florida, Hawaii, Louisiana, Michigan, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, Tennessee

#### MARYLAND

- 13 references: California
- 12 references: Pennsylvania
- 10 references: New York
- 8 references: Virginia
- 7 references: Illinois, Michigan
- 6 references: Arkansas, Missouri, Oregon, Washington, Wisconsin
- 5 references: Colorado, New Jersey, Ohio
- 4 references: Georgia, Iowa, Kentucky, Louisiana

3 references: Alabama, Arizona, Connecticut, Delaware, Idaho, Minnesota, Nebraska, North Carolina, Oklahoma, Tennessee, Texas, West Virginia

2 references: Hawaii, Indiana, Maine, Massachusetts, Montana, North Dakota, Rhode Island, Wyoming

1 reference: Kansas, Mississippi, South Carolina, South Dakota

#### MASSACHUSETTS

9 references: California

8 references: New York

7 references: Florida

6 references: Alaska, Virginia

5 references: Pennsylvania, Washington

4 references: Connecticut, Kentucky, Louisiana, Maine, Michigan, Minnesota, Ohio

3 references: Arizona, Illinois, New Hampshire, South Dakota, Vermont

2 references: Alabama, North Carolina, Tennessee, Texas, West Virginia

1 reference: Colorado, Delaware, Idaho, Indiana, Iowa, Missouri, New Mexico, Oklahoma, Rhode Island, South Carolina, Utah, Wisconsin

#### MICHIGAN

19 references: California

15 references: Ohio

10 references: Pennsylvania

8 references: New York, Oklahoma, Washington

7 references: Massachusetts, Texas, Virginia

6 references: Kentucky, Maryland, Nebraska

5 references: Alabama, Colorado, Illinois, Kansas, Vermont

4 references: Arizona, Delaware, Florida, Georgia, Idaho, Indiana, Minnesota, New Hampshire, Utah, Wyoming

3 references: Alaska, Connecticut, Hawaii, Montana, North Carolina, South Dakota, Tennessee

2 references: Iowa, Louisiana, Mississippi, Nevada, New Jersey, New Mexico, Oregon, West Virginia, Wisconsin

1 reference: Arkansas, North Dakota, Rhode Island

#### MINNESOTA

12 references: Wisconsin

11 references: Missouri

- 10 references: Ohio
- 9 references: California, Kansas, Michigan, New York
- 8 references: Iowa, Massachusetts, Nebraska, Oregon, Pennsylvania
- 7 references: South Dakota
- 6 references: Kentucky, North Dakota, Texas
- 5 references: Georgia, Maryland, New Hampshire, Tennessee, Washington
- 4 references: Montana
- 3 references: Alabama, Arkansas, Idaho, Louisiana, North Carolina, South Carolina, Vermont, Virginia
- 2 references: Arizona, Colorado, Connecticut, Delaware, Indiana, Maine, New Jersey, Oklahoma
- 1 reference: Alaska, Mississippi, New Mexico, Rhode Island, Utah, West Virginia

#### MISSISSIPPI

- 8 references: Alabama, Florida, Louisiana
- 6 references: Georgia, Missouri, Ohio
- 5 references: New Mexico, Tennessee, West Virginia
- 4 references: Arizona, Oklahoma, Texas
- 3 references: California, Colorado, Idaho, Kansas, Pennsylvania, Washington
- 2 references: Connecticut, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Nebraska, New Jersey, Wisconsin
- 1 reference: Alaska, Arkansas, Minnesota, Montana, Nevada, New York, North Carolina, North Dakota, Oregon, South Carolina, Utah, Vermont, Wyoming

#### MISSOURI

- 15 references: California
- 13 references: Ohio
- 11 references: Illinois
- 10 references: Oklahoma
- 9 references: Kentucky
- 8 references: Michigan
- 7 references: Kansas, Louisiana, Wisconsin
- 6 references: Montana, Texas
- 5 references: Colorado, Oregon, Tennessee
- 4 references: Arkansas, Florida, Iowa, New York, Washington

3 references: Arizona, Connecticut, Indiana, Massachusetts, Minnesota, Mississippi, Nebraska, North Carolina, North Dakota, Pennsylvania, South Carolina, Wyoming

2 references: Alaska, Delaware, Georgia, Idaho, Maine, Maryland, New Mexico, Vermont, Virginia

1 reference: Nevada, New Hampshire, New Jersey, Rhode Island, South Dakota, West Virginia

#### MONTANA

9 references: Alaska

8 references: California

6 references: Oregon

5 references: Washington

4 references: Arizona, Colorado

3 references: Michigan, Ohio

2 references: Minnesota, New York, North Dakota, Pennsylvania, Texas, Wyoming

1 reference: Arkansas, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, Tennessee, West Virginia

#### NEBRASKA

7 references: California, Colorado

5 references: Arkansas

4 references: Illinois, Oklahoma

3 references: Texas, West Virginia, Wisconsin

2 references: Alabama, Alaska, Arizona, Iowa, Missouri, Montana, New Mexico, New York, South Carolina, Washington, Wyoming

1 reference: Florida, Kentucky, Louisiana, Michigan, Minnesota, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Virginia

#### NEVADA

24 references: California

4 references: Florida

3 references: Arizona, New York, Wyoming

2 references: Alabama, Idaho, Kansas, Nebraska, New Mexico, Oklahoma, Oregon, Virginia, Wisconsin

1 reference: Georgia, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Pennsylvania, Rhode Island, Washington, West Virginia

## NEW HAMPSHIRE

5 references: Massachusetts

4 references: Alaska

2 references: Alabama, California, Florida, Missouri, Oregon,  
Pennsylvania

1 reference: Delaware, Iowa, Kentucky, Maine, South Dakota, Texas,  
Wisconsin

## NEW JERSEY

14 references: New York

11 references: California

7 references: Pennsylvania, Massachusetts

4 references: Maryland, Minnesota, Missouri, Ohio

3 references: Florida, Hawaii, Kentucky

2 references: Alaska, Arizona, Michigan, Oregon, Rhode Island, Texas,  
Washington

1 reference: Arkansas, Colorado, Connecticut, Kansas, Louisiana,  
Maine, Nebraska, Oklahoma, Utah, Vermont, Virginia, West Virginia,  
Wisconsin

## NEW MEXICO

16 references: Colorado, Oklahoma

13 references: Pennsylvania

12 references: Montana

11 references: California

9 references: Arizona, Missouri

8 references: Idaho, Illinois, Ohio, Texas, Washington

7 references: Kansas, Michigan, Minnesota, Tennessee

5 references: Alabama, Arkansas, Florida, Georgia, Iowa, Louisiana,  
North Dakota, Oregon, Utah, Virginia

4 references: Kentucky, New Jersey, New York, South Dakota, West  
Virginia, Wisconsin, Wyoming

3 references: Alaska, Delaware, Maryland, Mississippi, Nebraska

2 references: Hawaii, Maine, South Carolina

1 reference: Connecticut, Massachusetts, Rhode Island

## NEW YORK

7 references: California, Pennsylvania

6 references: Ohio

5 references: Massachusetts



4 references: Louisiana, New Jersey

3 references: Delaware, Illinois, Missouri

2 references: Arizona, Colorado, Connecticut, Georgia, Maryland, Michigan, Minnesota, North Carolina, Texas, Virginia, Wisconsin

1 reference: Idaho, Indiana, Kansas, Maine, New Hampshire, Tennessee, West Virginia, Wyoming

#### NORTH CAROLINA

6 references: California

5 references: Michigan

4 references: Ohio, Pennsylvania, Texas, Virginia

3 references: Massachusetts, Nebraska, New Jersey, South Carolina

2 references: Colorado, Florida, Georgia, Indiana, Louisiana, New York, Oklahoma

1 reference: Alabama, Connecticut, Illinois, Kansas, Maine, Minnesota, Missouri, New Mexico, Rhode Island, Utah, West Virginia, Wyoming

#### NORTH DAKOTA

16 references: California

15 references: Minnesota

12 references: Pennsylvania, South Dakota

10 references: Montana

9 references: Nebraska

8 references: Michigan, Ohio

7 references: Florida, Oregon

6 references: Illinois, Kansas, Washington, Wisconsin

5 references: Colorado, Oklahoma

4 references: Idaho, Kentucky, New York

3 references: Arizona, Arkansas, Indiana, New Mexico, Virginia, West Virginia

2 references: Alaska, Missouri, New Hampshire, New Jersey, Tennessee, Texas

1 reference: Georgia, Hawaii, Louisiana, Maryland, Rhode Island, Utah, Wyoming

#### OHIO

30 references: California

17 references: New York

15 references: Pennsylvania

11 references: Illinois, Michigan, Missouri

9 references: Washington

7 references: Kentucky, Tennessee

6 references: Iowa, Kansas, Texas

5 references: Maryland

4 references: Arkansas, Florida, Georgia, Minnesota, Nebraska, Oregon,  
Wisconsin

3 references: Alabama, Massachusetts, Mississippi, Montana, New  
Hampshire, North Carolina

2 references: Connecticut, Delaware, Idaho, Louisiana, New Jersey,  
Oklahoma, Rhode Island, South Carolina, Vermont, Virginia, West Virginia

1 reference: Arizona, Colorado, Maine, South Dakota, Utah

#### OKLAHOMA

14 references: California

9 references: Pennsylvania

8 references: Illinois

7 references: Arizona, Nebraska, Texas

6 references: Kansas, Kentucky, Missouri, Montana, New York

5 references: Alabama, Colorado, Florida, Oregon

4 references: Arkansas, Michigan, Ohio

3 references: Alaska, South Dakota

2 references: Iowa, Maryland, New Jersey, Virginia, Washington,  
Wisconsin, Wyoming

1 reference: Georgia, Idaho, Indiana, Massachusetts, Minnesota,  
Mississippi, Nevada, New Mexico, Rhode Island

#### OREGON

37 references: Indiana

31 references: California

16 references: Ohio

12 references: Pennsylvania

11 references: Washington

10 references: Colorado, Illinois, Michigan, Tennessee

9 references: Delaware, New Jersey

8 references: Louisiana, Missouri, Montana, Texas, Vermont

7 references: Connecticut, Georgia, Oklahoma

6 references: Iowa, Kentucky, Massachusetts, New York, Wisconsin

5 references: Alabama, Arizona, Maine, Maryland, Minnesota,  
Mississippi, Nevada, New Hampshire, Wyoming

4 references: Alaska, Arkansas, Florida, Hawaii, Idaho, Kansas, New Mexico, Utah, Virginia

3 references: Nebraska, North Carolina, Rhode Island, South Carolina, South Dakota

2 references: West Virginia

1 reference: North Dakota

#### PENNSYLVANIA

12 references: California

11 references: New Jersey, Ohio

9 references: Illinois

8 references: Massachusetts, New York

7 references: Georgia

6 references: Indiana

5 references: Colorado, Florida, Maryland

4 references: Kansas, Texas, Washington

3 references: Delaware, Kentucky, Louisiana, Michigan, Oklahoma, Oregon, Virginia, Wisconsin

2 references: Connecticut, Hawaii, Idaho, Iowa, Missouri, Montana, New Hampshire, Rhode Island, South Carolina, West Virginia, Wyoming

1 reference: Arizona, Mississippi, Nebraska, Nevada, New Mexico, North Carolina

#### RHODE ISLAND

5 references: Texas

4 references: California, New York

3 references: Connecticut, Illinois, New Hampshire, Pennsylvania

2 references: Alabama, Colorado, Florida, Maryland, Michigan, New Mexico, North Carolina, North Dakota, Ohio, South Carolina

1 reference: Alaska, Arizona, Arkansas, Delaware, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, Nevada, New Jersey, Utah, Vermont, Virginia, Washington, Wyoming

#### SOUTH CAROLINA

2 references: Georgia, Kentucky, North Carolina, Virginia

1 reference: Alabama, Arizona, Colorado, Connecticut, Florida, Illinois, Louisiana, Maine, New Hampshire, Oklahoma, Oregon, Vermont, Washington

## SOUTH DAKOTA

8 references: North Dakota  
5 references: Arizona, Nebraska, Oklahoma  
4 references: California, Illinois, Michigan, Pennsylvania  
3 references: Arkansas, Kentucky, Minnesota, Texas, Utah, Wyoming  
2 references: Colorado, Florida, Montana, Oregon, Tennessee  
1 reference: Alabama, Alaska, Georgia, Louisiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Mexico, New York, North Carolina, Rhode Island, Vermont, Virginia, Washington, West Virginia, Wisconsin

## TENNESSEE

9 references: North Carolina  
7 references: Kentucky  
6 references: California  
5 references: Colorado  
4 references: Pennsylvania  
2 references: Alabama, Arkansas, Delaware, Hawaii, Mississippi, Nebraska, Virginia, Washington  
1 reference: Arizona, Florida, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Ohio, Oklahoma, Oregon, West Virginia, Wisconsin, Wyoming

## TEXAS

11 references: Ohio, Louisiana  
10 references: California, Illinois, Missouri, Pennsylvania  
9 references: Indiana, Massachusetts, Virginia  
7 references: Arkansas, Kentucky, Mississippi, Nebraska  
6 references: Colorado, Florida, New Mexico, North Dakota  
5 references: Alabama, Maryland, Montana, New York, Tennessee, Utah, Washington, Wyoming  
4 references: Alaska, Delaware, Hawaii, Iowa, Minnesota, New Hampshire, New Jersey, Oklahoma  
3 references: Connecticut, Maine, Michigan, Nevada, North Carolina, Oregon, South Carolina, South Dakota, West Virginia, Wisconsin  
2 references: Arizona, Georgia, Kansas, Rhode Island, Vermont

## UTAH

17 references: California  
14 references: Arizona, Colorado

10 references: Oregon  
9 references: Montana  
8 references: Oklahoma, Washington  
7 references: Idaho  
6 references: Alabama, Arkansas  
5 references: Georgia, Illinois, Michigan, Minnesota, Missouri, New Mexico, Ohio, Virginia  
4 references: Florida, Nebraska, New York, Texas  
3 references: Alaska, Indiana, Kansas, Mississippi, New Hampshire, Pennsylvania, South Carolina, South Dakota, West Virginia, Wyoming  
2 references: Delaware, Hawaii, Kentucky, Louisiana, Nevada, Rhode Island  
1 reference: Connecticut, Iowa, Maine, Maryland, North Carolina, North Dakota, Vermont, Wisconsin

#### VERMONT

10 references: California  
6 references: Alaska, Pennsylvania  
5 references: New Hampshire, Ohio, Rhode Island  
4 references: Maine  
3 references: New Jersey, New York, Oregon, Virginia  
2 references: Colorado, Connecticut, Idaho, Massachusetts, Missouri  
1 reference: Arkansas, Florida, Hawaii, Indiana, Kentucky, Maryland, Minnesota, Mississippi, Nevada, North Carolina, South Dakota, Tennessee, Texas, Wisconsin

#### VIRGINIA

10 references: Illinois  
7 references: Kentucky  
6 references: Pennsylvania  
5 references: Missouri, New York  
4 references: California, Nebraska, North Carolina, West Virginia  
3 references: South Carolina  
2 references: Alabama, Indiana, Michigan, Ohio, Utah, Wisconsin  
1 reference: Arizona, Arkansas, Connecticut, Hawaii, Kansas, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Washington, Wyoming

#### WASHINGTON

42 references: California

30 references: Oregon  
20 references: Colorado  
16 references: Arizona, Illinois  
14 references: Michigan  
12 references: Indiana  
11 references: Kentucky, Minnesota, New York, Ohio  
10 references: Montana  
9 references: Kansas, Missouri, Oklahoma, Texas, Wisconsin  
8 references: Nebraska, Pennsylvania  
7 references: Florida, Massachusetts  
6 references: Arkansas, Louisiana, Maryland, South Dakota, Utah, West Virginia  
5 references: Alaska, Delaware, Georgia, Idaho, Iowa, Nevada  
4 references: Connecticut, Mississippi, New Mexico, Virginia  
3 references: Alabama, Hawaii, New Jersey, North Dakota, Wyoming  
2 references: Maine, New Hampshire, North Carolina, Rhode Island, Tennessee

#### WEST VIRGINIA

16 references: Virginia  
12 references: Ohio  
11 references: Florida  
9 references: Illinois  
8 references: Arizona, California, Kansas, Kentucky, Pennsylvania  
7 references: Alaska, Arkansas, Idaho, Indiana, Maine, Michigan, Minnesota, Oklahoma, South Dakota, Tennessee, Utah  
6 references: Alabama, Delaware, Maryland, Oregon, Vermont, Wisconsin, Wyoming  
5 references: Colorado, Connecticut, Georgia, Missouri, Montana  
4 references: Louisiana, Nebraska, New Hampshire, North Dakota, South Carolina, Texas  
3 references: Hawaii, Iowa, Mississippi, New York, North Carolina, Washington  
2 references: Massachusetts, New Jersey, Rhode Island  
1 reference: Nevada, New Mexico

#### WISCONSIN

9 references: California  
7 references: New Jersey  
5 references: Michigan, New York

4 references: Illinois, Washington

2 references: Alabama, Kansas, Maryland, Minnesota, Pennsylvania

1 reference: Alaska, Arkansas, Connecticut, Florida, Idaho, Indiana, Iowa, Louisiana, Massachusetts, Mississippi, Montana, Nevada, New Mexico, Oregon, South Carolina, Tennessee, Utah

#### WYOMING

15 references: California

12 references: Idaho

9 references: Montana, Pennsylvania, Utah

7 references: Washington

6 references: North Dakota, Oklahoma

5 references: Alaska, Arizona, Colorado, Massachusetts, Michigan, New Jersey, New Mexico, Ohio, Oregon

4 references: Florida, Illinois, Indiana, Kansas, Minnesota, New Hampshire, North Carolina, Vermont

3 references: Alabama, Arkansas, Iowa, Kentucky, Missouri, Nebraska

2 references: Louisiana, South Carolina, South Dakota, Virginia, West Virginia

1 reference: Connecticut, Delaware, Georgia, Hawaii, Nevada, New York, Rhode Island, Tennessee, Texas